CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

No. [redacted]312

LOUISVILLE & JEFFERSONVILLE BRIDGE COMPANY

vs.

THE UNITED STATES OF AMERICA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

FILED DECEMBER 8, 1917.

(26,251)

(26,251)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 784.

LOUISVILLE & JEFFERSONVILLE BRIDGE COMPANY

vs.

THE UNITED STATES OF AMERICA.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

INDEX.

	Original.	Print
Certificate from the United States Circuit Court of Appeals for the Sixth Circuit	1	1
Statement	1	1
Question certified	5	4
Judges' signatures	5	4
Blue-print	6	4
Clerk's certificate	7	5

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 15, 1917.

1 Filed Nov. 22, 1917. Wm. C. Cochran, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

No. 3016.

LOUISVILLE AND JEFFERSONVILLE BRIDGE COMPANY, Plaintiff in Error,

vs.

UNITED STATES OF AMERICA, Defendant in Error.

Error to the District Court of the United States for the Western District of Kentucky.

Submitted October 10, 1917; Certified November 16, 1917.

Before Knappen and Denison, Circuit Judges, and McCall, District Judge.

Per Curiam:

In the court below, the railroad was found guilty upon each of ten counts for operating a train without having its air brakes under that engine control required by the Safety Appliance Act, as amended March 2, 1903. Upon the trial, a jury was waived and the facts were stipulated. A detailed map was also agreed upon as a part of the stipulation; but for convenience, the main facts appearing by the map and from the pleadings and the stipulation are united in the following statement:

At Louisville, the Big Four Railroad, coming from the north, connects with the Chesapeake & Ohio, coming from the south. The Louisville & Jeffersonville Bridge Company is a common carrier, engaged in interstate commerce, and constitutes the connection between, and the joint terminal of, the other two railroads. It does no other business. It will be called the defendant. It maintains a terminal, switching and transfer yard, extending east and west over three city blocks, from Hancock Street west past Jackson and Preston Streets, to Floyd Street, and, for part of its length, extending north and south two city blocks, from Main Street north past Washington Street, to Water Street, running east
2 and west on the Ohio River bank. The extreme distance east and west is about 1,800 feet, and north and south about 700 feet. Defendant's main track enters this territory from the east and passes westerly and northwesterly, leaving the above-described yard space at the northwest corner. During its entire distance through the yard, this main track has, on one side or the other, or both sides, from 15 to 25 approximately parallel tracks, connected with the main

track by leads in the usual manner. The points of the switch from the main track to the last lead track, as we go to the west, are in Water Street at the west line of Floyd Street, and this point we fix as being the exact northwest corner of the yard. At a point 85 feet further northwest, defendant's main line track joins an Illinois Central transfer track in Water Street, and with that, leading westerly, forms the continuous main line over which through freight and passenger trains of the Big Four are operated in both directions through the yard and westerly along Water Street. The tracks in Water Street east of Floyd Street are Illinois Central and Louisville & Nashville transfer tracks and an engine house track of defendant; but C. & O. main line through trains are operated in both directions along Water Street over the Illinois Central and Louisville & Nashville tracks, both east and west of Floyd Street.

Directly west of the defendant's yard and across Floyd Street lies an Illinois Central yard. If an engine desires to move from defendant's yard to the Illinois Central yard, it must, and it always does, go northwesterly about 100 feet beyond the corner of and outside defendant's yard, until it passes the switch connecting defendant's main line with the Illinois Central transfer track and enters on the latter; then, this switch having been thrown, it proceeds back eastwardly along this latter track on Water Street, a distance of about 200 feet, until it passes the switch connecting with the Illinois Central side track leading to the Illinois Central yard; then, this switch having been thrown over, the engine proceeds forward on this Illinois Central side track southwesterly for a distance of about 150 feet, where it enters that yard. Any train or string of cars, transferred from one yard to the other, necessarily takes the same course. The distance which the westernmost end of such train will traverse the Illinois Central track west of the switch by which it enters thereon will be measured by the length of the train. In every instance, it will go only the one train length necessary to get its rear or easterly end past that switch which, according to its setting, permits
3 the train to enter from the east from defendant's main track or to again leave toward the east on the Water Street transfer track. In the same way, the easternmost end of such train will pass over Illinois Central and Louisville & Nashville tracks easterly from Floyd Street only as far as necessary to get the then rear or westerly end past the switch which, upon being set therefor, will permit the train to leave those tracks and pass southwesterly into the Illinois Central yard.

The trains or strings of cars forming the subjects of the several counts varied in number from 12 to 32. The parties agreed upon the transaction named in the first count as typical of the others. Upon this occasion, 26 cars which had come into defendant's yard from the Big Four or the C. & O. and which were for delivery to the Illinois Central, had been, by suitable operations, assembled (without caboose) in a "train" or "string" or "drag" in defendant's yard (whether upon the main or a side track does not appear). The east end was near Hancock Street, at the easterly end of the yard; the west end was just east of Preston Street. Its length was about 1,100

feet. An engine and tender were at the easterly end. The air hose was not coupled between any two of the cars, and the air brakes on the cars were therefore not under control from the engine. Defendant's yard foreman took his position in a tower 15 feet high at about the corner of Floyd and Water Streets, and by his signals directed all the subsequent events. The cars were then moved northwesterly out of the yard and westerly along Water Street until the pushing engine had passed the switch which was 85 feet beyond the northwest corner of the yard, and the westernmost car had traveled about 700 feet upon defendant's track in its yard (how much upon the main track does not appear) about 100 feet on defendant's track and outside of its yard and about 1,100 feet upon that portion of the Illinois Central transfer track used as main line by the Big Four and the C. & O. The switch which the engine had just passed over being appropriately reset, and several switches among the easterly Water Street tracks being properly lined up, the engine proceeded to the east, pulling its cars and passing over the Illinois Central transfer tracks and Louisville & Nashville transfer tracks in Water Street (being part of the track used by the C. & O. for its through main line trains), until it had traveled a distance of about 1,300 feet and the rear car cleared that switch, 50 feet east of Floyd Street, which con-
4 nected with the Illinois Central yard track. This switch being then properly reset, the engine pushed the cars westwardly into the Illinois Central yard, putting part of them upon one track, and, because that track was too short, the remainder of them upon another track.

During this whole movement, the engine or some one of the cars was upon or immediately adjacent to one of the three switches over which it moved, and was within 200 feet of the yard foreman directing its movements; but this foreman did not control main line movements so as to protect these cars and through trains against each other.

The movement was a transfer from one yard to another. The switching operations incidental to selecting and assembling the 26 cars in a string had been finished before this transfer movement was commenced, and the switching incidental to breaking up the string and distributing the cars according to their further intended transportation did not begin until after the transfer movement into the Illinois Central yards had been finished (except so far as breaking it up into two parts was necessary to get it into the Illinois Central yard).

Owing to the proximity of the lead line switch at the northwest corner of the yard to the Illinois Central tracks, it was necessary that any string of engine and cars, more than 85 feet in length, should be pushed or pulled on to the Illinois Central track west of Floyd Street for the whole of its excess over that length, whenever it was desired to shift such string between the main track in the west part of the yard and any one of the four side tracks next north thereof, or, (if the string was more than 200 feet long) between any two of such side tracks.

From the point of connection between defendant's main line and

the Illinois Central track and going west on the latter track, there is an ascending grade of from one to two per cent. for about 800 feet. To get momentum to ascend this grade, the 26 cars, while passing through the yard and before entering on the Illinois Central track, had been given a speed of 15 miles per hour.

All street crossings were protected by gates.

For greater certainty, the agreed map, which has been generally described, is attached hereto and made part hereof.

Upon these facts, it is contended by the government that such a transfer from one yard to another exposes the crew and the public to main line dangers which it was the purpose of the law to avoid and that the movement is not a switching operation but is the "running of a train" * * * "upon its line" within the act. The defendant contends that to require the air hose to be coupled 26 times would involve unnecessary danger to the crew; that there was no exposure to main line dangers, except as there would have been if only that part of the main line within the yard had been used; that there was no use of the main track within or without the yard except as it is common to use for switching purposes those portions of the main line in a yard and projecting therefrom; that this "train" never started out "for a run or trip along the road," but intended to stop as soon as it got outside the yard, and had no purpose except to get itself over and diverted by the two switches each of which was within 100 feet of the yard; and that the operation was dominantly a switching movement across Floyd Street.

Upon these facts, we desire the instruction of the Supreme Court for our proper decision of the following question of law arising thereon:

Does the Safety Appliance Act, as amended, when properly interpreted, require that 85 per cent. of the train air brakes shall be coupled and under engine control, when making such a transfer as that of the 26 cars whose movement has been described?

LOYAL E. KNAPPEN,
ARTHUR C. DENISON,
JNO. E. McCALL,
Dist. Judge,
Judges of the Circuit Court of Appeals for the Sixth Circuit.

(Here follows diagram marked page 6.)

7 United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

I, William C. Cochran, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Louisville & Jeffersonville Bridge Company, Plaintiff in Error vs. United States of America, Defendant in Error No. 3016, was duly filed and entered of record in my office by order of said Court, and as directed by said Court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 23rd day of November, A. D. 1917.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

WILLIAM C. COCHRAN,
Clerk of United States Circuit Court of Appeals for the Sixth Circuit.

Endorsed on cover: File No. 26,251. U. S. Circuit Court Appeals, 6th Circuit. Term No. 784. Louisville & Jeffersonville Bridge Company vs. The United States of America. (Certificate.) Filed December 8th, 1917. File No. 26,251.

-19-

No. 312.

Office Supreme Court, U. S.
FILED
MAR 27 1919
JAMES D. MAHER,
CLERK.

In The Supreme Court of the United States

OCTOBER TERM, 1918

LOUISVILLE & JEFFERSONVILLE
BRIDGE COMPANY

vs.

THE UNITED STATES OF AMERICA

On a Certificate from the United States Circuit Court of Appeals for the Sixth Circuit.

BRIEF FOR THE LOUISVILLE & JEFFERSONVILLE BRIDGE CO.

The Standard Printing Company, Incorporated, Louisville, Ky.

The Supreme Court of the United States

LOUISVILLE & JEFFERSONVILLE BRIDGE COMPANY, - - - - *Plaintiff in Error,*

vs.

UNITED STATES OF AMERICA, - *Defendant in Error.*

POINTS AND AUTHORITIES.

The act of Congress and the order of the Interstate Commerce Commission on the subject of air or power brakes, requiring 85 per cent of such brakes to be coupled when a train is operated upon the road in interstate traffic, has no application to mere switching movements such as are here involved.

Act March 2, 1893, c. 196, sec. 1 (27 Statutes at Large, 531), U. S. Compiled Statutes, 1916 ed., sec. 8605;

Act of March 2, 1893, c. 196, sec. 6, as amended by Act of April 1, 1896, c. 87 (29 Statutes at Large, 85), U. S. Compiled Statutes, 1916 ed., sec. 8610;

Act March 2, 1903, c. 976, sec. 2 (32 Statues at Large, 943), U. S. Compiled Statutes, 1916 ed., sec. 8614;

Order promulgated by the Interstate Commerce Commission, June 6, 1910.

Opinion of District Court, 236 Fed. 1001:

U. S. vs. Erie Railroad, 237 U. S. 402;
U. S. vs. Pere Marquette, 211 Fed. 220;
U. S. vs. Grand Trunk Co., 203 Fed. 775;
A. T. & S. F. vs. United States, 198 Fed. 637;
C. & O. vs. U. S., 226 Fed. 683;
U. S. vs. C., B. & Q., 237 U. S. 410.
U. S. vs. Galveston, H. & H. R. R. No. 3196, decided by U. S. C. C. A., Fifth Circuit, on February 8, 1919.

The Supreme Court of the United States

LOUISVILLE & JEFFERSONVILLE
BRIDGE COMPANY, - - *Plaintiff in Error,*
vs. BRIEF FOR PLAINTIFF IN ERROR.
UNITED STATES OF AMERICA, - - *Defendant in Error.*

STATEMENT.

This case comes before this Court on a certificate from the United States Circuit Court of Appeals, Sixth Circuit, which, after reciting the facts, asks instruction upon the following question of law:

> "Does the Safety Appliance Act, as amended, when properly interpreted, require that 85 per cent of the train, air brakes shall be coupled and under engine control in making such a transfer as that of the 26 cars whose movement has been described."

For convenience we have appended to this brief a copy of the Safety Appliance Act involved, as amended, and a copy of the order of the Interstate Commerce Commission promulgated June 6, 1910.

We will briefly state the facts upon which this question is presented.

The United States (defendant in error) filed a penal action in the District Court for the Western District of Kentucky, charging in each of ten paragraphs that the Louisville & Jeffersonville Bridge Company (plaintiff in error)

operated a train in interstate traffic with less than 85 per cent of the air or power brakes coupled, in violation of the Safety Appliance Act, as amended, and the regulation of the Interstate Commerce Commission upon the subject. Upon issues joined, a jury being waved, with the facts stipulated by the parties, the District Court found the plaintiff in error guilty upon each of the ten counts of the petition.

The Bridge Company prosecuted writ of error to the Circuit Court of Appeals. The certificate of that Court, with the map which is made part thereof, shows the facts as follows:

The Bridge Company owned railroad and switching yards in the City of Louisville on the south bank of the Ohio River, extending in length east and west a distance of three city blocks, or 1,800 feet, and in width north and south a distance of two blocks, or 700 feet. Water Street, running east and west, is the northern boundary of the yards. The next parallel street south of it, which runs through the yards, is Washington, and the next parallel street, which is the southern boundary of the yards, is Main Street. Floyd Street, which runs north and south, is the western boundary of the yards; the next parallel street east of it is Preston; the next Jackson; and the next, which is the eastern boundary of the yards, is Hancock.

The yards of the Illinois Central Railroad are immediately south of Water Street and west of Floyd. The yards of the Bridge Company are immediately south of Water Street and east of Floyd Street, the two yards being divided only by Floyd Street. The Bridge Company had some cars in its yards, east of Floyd Street, which it desired to switch

into the Illinois Central yards immediately west of Floyd Street.

The agreed facts described in the first count of the petition as typical of those set out in the other counts, show that the Bridge Company had a locomotive immediately west of Hancock Street and coupled to it, and west of it, were 26 cars, which extended to Preston Street, two blocks away, the western end of this cut of cars being then one block from the Illinois Central yards. In order to get these cars, however, into the Illinois Central yards, the engine had to push them in a northwestwardly direction through the block bounded by Preston on the east, Floyd on the west, Water on the north and Washington on the south, and to enter Water Street, at its intersection with Floyd Street, and move thence westwardly along the Illinois Central tracks in Water Street. The engine pushing the cars cleared a switch which was about 100 feet west of Floyd. When this switch was set it was then necessary for the engine to pull the cars eastwardly along the Illinois Central tracks in Water Street until the west end of the cut cleared a switch about 100 feet east of Floyd Street. The engine would then back the cars in a southwestwardly direction into the Floyd Street yards of the Illinois Central lying in the block immediately west of Floyd, south of Water, east of Brook, and north of Washington, all of which was done, and when the cars were delivered in the Floyd Street yards of the Illinois Central they were partly upon one track and partly upon another, neither track being long enough to hold the entire number of cars switched. None of the air brakes on the cars were coupled so that same could be operated by the engine, the

cars being controlled alone by the brakes on the engine itself and the hand brakes on the cars if necessary.

While the switching was being done the yard foreman of the Bridge Company directed the movements from a tower 15 feet high, at the corner of Floyd and Water Streets.

The Illinois Central tracks west of Floyd, for about 800 feet, are upon an ascending grade of from one to two per cent. In order to ascend the grade a speed of 15 miles is attained. All street crossings are protected by gates. The cars when delivered in the Illinois Central yards were to be switched and distributed for further transportation to their various destinations.

From the above it will be seen that this cut of cars moved only one block through the Bridge Company's yards from Preston to Floyd Street; thence westwardly, the length of the 26 cars (one train length, if it may be designated as such), onto the I. C. tracks west of Floyd Street; thence east one train length along the north or Water Street tracks east of Floyd; and thence southwestwardly into the Illinois Central yards between Floyd and Brook Streets, where the train was broken up. To be accurate, the movement east in Water Street was along the tracks of the Illinois Central and the L. & N., which have physical connection at or near Preston Street.

The United States contends that this was a movement of a train upon the road within the meaning of the Safety Appliance Act and the rule promulgated by the Interstate Commerce Commission requiring 85 per cent of the cars to be so coupled with air that the brakes could be operated thereon from the locomotive.

The Bridge Company contends that this was a switching movement, pure and simple, and not within the purview of the statute and rule above referred to, when properly interpreted and applied.

The opinion of the District Court in this case is to be found in 236 Federal 1001.

A SWITCHING MOVEMENT IS NOT WITHIN THE AIR-BRAKE REQUIREMENTS OF THE SAFETY APPLIANCE ACT AS AMENDED, AND THE ORDER OF THE INTERSTATE COMMERCE COMMISSION.

In U. S. vs. Erie Railroad, 237 U. S. 402, the Court (on pages 406 and 407) said:

> "It will be perceived that the air-brake provision deals with running a train, while the other requirements relate to hauling or using a car. In one a train is the unit and in the other a car. As the context shows, a train in the sense intended consists of an engine and cars which have been assembled and coupled together for a run or trip along the road. When a train is thus made up and is proceeding on its journey it is within the operation of the air-brake provision. But it is otherwise with the various movements in railroad yards whereby cars are assembled and coupled into outgoing trains and whereby incoming trains which have completed their run are broken up. These are not train movements but mere switching operations, and so are not within the air-brake provision."

In that case it was held that the Safety Appliance Act and the rule of the Interstate Commerce Commission with regard to air-brake requirements, had not been complied with, but it appeared that the cars were moved from one

yard to another, which yards were two and a half or three miles apart.

In order to distinguish the facts in the case at bar from the facts in other cases, which will no doubt be referred to upon the argument, it will be observed as follows:

In U. S. vs. C., B. & Q., 237 U. S. 410, the yards between which the cars were moved were two miles apart, and were separated by the Missouri River.

In U. S. vs. Pere Marquette, 211 Fed. 220, the cars were moved from one yard to another, which yards were two miles apart.

In U. S. vs. Grand Trunk Co., 203 Fed. 775, the cars were moved from Buffalo to Bridgeburg, a distance of two miles.

In A., T. & S. F. vs. United States, 198 Fed 637, the cars were moved from Corwith, an outer Chicago yard, to the Eighteenth Street yard, a distance of eight miles.

In C. & O. vs. United States, 226 Fed. 683, the cars were moved from the F yards to the Second street yards, a distance of two miles.

It is hardly worth while in this connection to mention the case of Pennsylvania Company vs. U. S., 241 Fed. 828, referred to by counsel for defendant in error in the Circuit Court of Appeals, for the reason that it there appears that the points between which the cars moved were 100 miles apart.

In the case of U. S. vs. Galveston, H. & H. R. R., No. 3196, decided by the United States Circuit Court of Appeals, Fifth Circuit, on February 8, 1919 (not yet officially reported), it appears that the cars mentioned in the various counts were moved distances varying three and four-tenths

to four miles, and under conditions quite different from those presented in the case at bar.

ARGUMENT.

It would seem that the mere statement of this case is the argument of it. We believe we can safely assume that if the movement here involved was a mere switching movement the question propounded in the certificate should be answered in the negative, whereas if it was a movement of a train upon the road it should be answered in the affirmative.

In order to determine this point it will be necessary for this Court to distinguish, under the particular facts of this case, the one movement from the other. In doing so, we ask that it be clearly borne in mind that the cars were only moved through one city block in the yards of the plaintiff in error, east of Floyd Street, and placed in the yards of the Illinois Central Railroad immediately west of Floyd Street; that the cut of cars was never outside of either one of these yards except approximately the length of the string of cars and engine first west, and then, east, on Water Street, in order to get into the switch leading into the Illinois Central yards.

It can make no difference in principle whether the switching was done entirely in one yard, or partly in another yard immediately adjoining it, or partly in a track lying along the boundary of both yards which was used for switching purposes. Before the movement complained of was made, the cars were being switched and assembled in the Bridge Company's yards. When they were delivered in the Illinois Central yards the string of cars was again broken up into two drags and placed on two separate tracks and these

cars could not then have been moved out for a trip on the road until they were again switched, coupled together, and re-assembled into the trains which would take them to their various destinations.

It appears to us that if a reasonable construction is placed upon the Act, and the regulation of the Interstate Commerce Commission, referred to, the conclusion reached must be that such legislation was never intended to hamper railroad operations by the enforcement of unnecessary and impracticable requirements, and that this statute and order, as construed by the authorities, apply to the movement of a train upon the road or between points a considerable distance apart and not to mere operations in railroad yards like the movements here involved.

The cars mentioned in the certificate traveled, all told, a much less distance than those in any of the cases above referred to. Furthermore, the movement was not a continuous one or between two widely separated points. The movement was distinctly local, in a circumscribed area used for switching purposes, and the cars were not making a train trip over the road in the ordinary acceptation of the term, but were going back and forth and over switches between points a very short distance apart. It is difficult for us to conceive that the operations described were in any sense different from those ordinarily employed in switching cars back and forth in railroad yards.

The trial court in its opinion stresses the fact that the cut of cars making the movements referred to passed at times over main track. It would not seem that the character of track over which cars travel is a determinative factor

in considering the nature of a movement. A switching movement is none the less such because the cars pass during the course of such operation partly over main track and partly over side track. The movement is the same, whether made entirely on main track, entirely on side track, or partly on one and partly on the other.

If the reasoning of the trial court along this line is to be believed, no movement could be considered a switching operation which passed to any extent along or over main track in yards where main tracks are inevitably located. In small yards, particularly in country districts, the main track is used extensively for switching purposes.

These regulations were obviously intended to govern the operation of trains upon the road, upon the theory that their observance was conducive to safety. The Courts have recognized that where cars are being handled in a mere switching movement, the reason for the application of these regulations disappears. It is obvious that no good result can be accomplished by the continual coupling and uncoupling of air hose during switching movements, where the cars travel comparatively short distances, and the cuts are frequently broken up.

Entirely aside from the great expense in the operation of railroad yards, which would be entailed by the enforcement of the rule contended for in this case by the defendant in error, no good can result from it, as it would merely delay the handling of traffic and increase, rather than diminish, the danger which such legislation was intended to prevent.

We contend that the plaintiff in error has not violated either the letter or the spirit of the Act of Congress, or the

order the Commission here involved, and we ask that the question propounded in the certificate of the Circuit Court of Appeals be answered in the negative.

Respectfully submitted,

ALEX. P. HUMPHREY,

W. W. CRAWFORD,

EDWARD P. HUMPHREY,

Attorneys for Plaintiff in Error.

"Act of March 2, 1893, c. 196, sec. 1 (27 Statutes at Large 531). U. S. Compiled Statutes, 1916 ed., sec. 8605. DRIVING-WHEEL BRAKES, AND APPLIANCES FOR OPERATING TRAIN-BRAKE SYSTEM. From and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train-brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand-brake for that purpose."

"Act of March 2, 1893, c. 196, sec. 6, as amended by Act of April 1, 1896, c. 87 (29 Statutes at Large 85). U. S. Compiled Statutes, 1916 ed., sec. 8610." This section provides a penalty of $100 for each violation, and the manner in which same may be imposed.

"Act of March 2, 1903, c. 976, sec. 2 (32 Statutes at Large 943). U. S. Compiled Statutes, 1916 ed., sec. 8614. MINIMUM NUMBER OF CARS TO BE OPERATED BY TRAIN-BRAKES; INCREASE OF NUMBER OF INTERSTATE COMMERCE COMMISSION. Whenever, as provided in said Act, any train is operated with power or train-brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with

said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said Act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train-brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section."

Order of the Interstate Commerce Commission promulgated on June 6, 1910:

"IT IS ORDERED: That on and after September 1, 1910, on all railroads used in interstate commerce, whenever, as required by the Safety Appliance Act as amended March 2, 1903, any train is operated with power or train-brakes, not less than 85 per cent. of the cars of such train shall have their brakes used and operated by the engineer of the locomotive drawing such train, and all power-braked cars in every such train which are associated together with the 85 per cent. shall have their brakes so used and operated."

No. 814

In the Supreme Court of the United States

OCTOBER TERM, 1918

LOUISVILLE & NASHVILLE RAILROAD COMPANY

v.

THE UNITED STATES ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

LOUISVILLE & JEFFERSONVILLE BRIDGE Company
v.
THE UNITED STATES OF AMERICA.

No. 312.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

This case comes here on a certificate from the United States Circuit Court of Appeals for the Sixth Circuit asking for instructions as to whether the airbrake requirements of the safety-appliance acts (27 Stat. c. 196, p. 531; 32 Stat. c. 976, p. 943) apply to a train of cars being transferred by one railroad company from its own yard for delivery in the yard of another railroad company under the circumstances stated by the court.

THE FACTS.

The plaintiff in error is a common carrier engaged in interstate commerce at Louisville, Ky. It constitutes the connection between the Big Four Railroad

coming from the north, and the Chesapeake & Ohio Railroad, coming from the south, and constitutes the joint terminal of those two railroads. It does no other business. It maintains a terminal, switching, and transfer yard extending east and west over three city blocks, from east of Hancock Street across that street, crossing Jackson Street and Preston Street, to Floyd Street, a distance of about 1,800 feet. Plaintiff in error's main track extends entirely through this yard in a westerly and northwesterly direction, leaving the yard at its northwest corner and extending northwest through the intersection of Floyd and Water Streets 85 feet, to a point where it joins an Illinois Central transfer track in Water Street. With this transfer track it forms a continuous line over which through freight and passenger trains of the Big Four are operated in both directions through the yard and westerly along Water Street. The tracks on Water Street are Illinois Central and Louisville & Nashville transfer tracks, but the Chesapeake & Ohio main-line through trains are operated in both directions along Water Street over these tracks, both east and west of Floyd Street. Directly west and just across Floyd Street from the plaintiff in error's yard is the Illinois Central yard. The only rail connection between these two yards consists of plaintiff in error's main line, which, as stated above, runs into the track of the Illinois Central and thus forms the main line for Big Four freight and passenger trains. This track, however, does not run directly into the Illinois Central yard. Entrance into that yard from

the plaintiff in error's yard can be accomplished only by running over plaintiff in error's main line on to the Illinois Central track beyond a switch, then backing eastwardly along the Illinois Central and Louisville & Nashville tracks, used as a main line for Chesapeake & Ohio trains, to a switch east of Floyd Street, and then over a transfer track back across Floyd Street into the Illinois Central yards. This operation necessarily involves moving northwestwardly about 100 feet beyond plaintiff in error's yard, thence eastwardly along Water Street about 200 feet, all of which, as stated, is over main-line tracks, and then a distance of about 150 feet over a transfer or side track of the Illinois Central into the yards of that company. The situation will be more clearly understood by reference to the map attached to the record.

The precise case certified is this: Twenty-six cars had come into plaintiff in error's yard from the Big Four or Chesapeake & Ohio for delivery to the Illinois Central. They were at the eastern end of plaintiff in error's yard. That company first, by suitable operations, assembled them (without a caboose) in a train the east end of which was near Hancock Street. The length of the train was 1,100 feet and it extended to a point just east of Preston Street. The train having been assembled, an engine and tender were attached at the eastern end near Hancock Street for the purpose of transferring it to the Illinois Central yard. Its movements were controlled by signals by a yard foreman in a tower 15 feet high near the

corner of Floyd and Water Streets. This foreman, however, had no control of the movement of main-line trains over any of the main lines traversed by this train. It does not appear whether the train when assembled was on plaintiff in error's main line or on one of its side tracks. It was transferred to the Illinois Central yard in the manner above described. In being so transferred it traveled about 700 feet on plaintiff in error's track within its yard. It does not appear how much of this 700 feet was on plaintiff in error's main track, but the map shows that it could not have reached the northwest corner of the yard without using, for at least a portion of the distance, this main line. It then moved for about 100 feet on plaintiff in error's main track outside of its yard and about 1,100 feet upon that portion of the Illinois Central track which was used as a main line by the Big Four and Chesapeake & Ohio. It then moved about 1,300 feet over the tracks used by the Chesapeake & Ohio for its through trains and then used a side track into the Illinois Central yard. The train being too long to be placed on one track in that yard, it was cut in two and one part placed on one track and the other part on another track. This constituted the delivery to the Illinois Central, and that company received and distributed the cars. The speed of the train while passing through the yard and before entering on the Illinois Central track was 15 miles per hour. The street crossings over which it passed were protected by gates.

The court made this summing up statement:

> The movement was a transfer from one yard to another. The switching operations incidental to selecting and assembling the 26 cars in a string had been finished before this transfer movement was commenced, and the switching incidental to breaking up the string and disturbing the cars according to their further intended transportation did not begin until after the transfer movement into the Illinois Central yards had been finished (except so far as breaking it up into two parts was necessary to get it into the Illinois Central yard).

QUESTION CERTIFIED.

Upon these facts the Circuit Court of Appeals has certified this question:

> Does the safety appliance act, as amended, when properly interpreted, require that 85 per cent of the train air brakes shall be coupled and under engine control, when making such a transfer as that of the 26 cars whose movement has been described?

BRIEF.

I.

The requirement in question has been expressly held by this court to apply to the movement of a train made up in one yard of a railroad company and being transferred to another yard of the same company under just such circumstances as appear in this case. *United States* v. *Erie Railroad Co.*, 237 U. S. 402; *United States* v. *Chicago, Burlington & Quincy Railroad Co.*, 237 U. S. 410.

II.

The reason for the above rule applies with even greater force when, as in this case, the movement is from the yard of one company for delivery in the yard of another company and over tracks which constitute the connecting link between two great railroad systems over which their main line trains are operated and which are used for switching operations by two other companies.

ARGUMENT.

The question certified must necessarily be answered in the affirmative unless the facts in this case, as stated by the Circuit Court of Appeals, distinguished it from the *Erie Railroad Company* and *Chicago, Burlington & Quincy Railroad Company cases, supra.* Both of those cases involved transfer trains between two yards of the same company, and in both cases it was held that the air-brake requirements applied.

In the Erie Railroad case the distance between the yards was from two to three and one-half miles, and the connecting tracks, though used as main-line tracks for freight, were not used by passenger trains. (237 U. S. 403–404.)

In the Chicago, Burlington & Quincy Railroad case the distance between the yards was about two miles and the track connecting them was a main-line track for passenger and freight trains. (237 U. S. 411.)

In the present case the length of main-line track used in making the transfer was 2,500 feet plus a part or all of the 700 feet within plaintiff in error's yard—in other words, something over a half mile.

In the Erie Railroad case the court said:

> We are persuaded that the transfer trains moving from Jersey City and Weehawken to Bergen and *vice versa* came within the purview of the air-brake provision. They were made up in yards like other trains and then proceeded to their destinations over main-line tracks used by other freight trains, both through and local. They were not moving cars about in a yard or on tracks set apart for switching operations, but were engaged in main-line transportation, and this in circumstances where they had to pass through a dark tunnel, over switches leading to other tracks and across passenger tracks whereon trains were frequently moving. Thus it is plain that, in common with other trains using the same main-line tracks, they were exposed to hazards which made it essential that appliances be at hand for readily and quickly checking or controlling their movements. The original act prescribed that these appliances should consist of air brakes controlled by the engineer on the locomotive, and the act of 1903 declared that this requirement should "be held to apply to all trains." We therefore conclude and hold that it embraced these transfer trains. (237 U. S. pp. 408–409.)

Every fact referred to in the above quotation is in the present case, except that we have here no tunnel.

In the Chicago, Burlington & Quincy case the court said:

> Giving effect to the views quite recently expressed in *United States* v. *Erie Railroad Company, ante*, p. 402, we think these trains came within the air-brake requirement, which the amendatory act of 1903 declares "shall be held to apply to all trains * * * on any railroad engaged in interstate commerce." According to the fair acceptation of the term they were trains in the sense of the statute. The work in which they were engaged was not shifting cars about in a yard or on isolated tracks devoted to switching operations, but moving traffic over a considerable stretch of main-line track—one that was a busy thoroughfare for interstate passengers and freight traffic. Every condition suggested by the letter and spirit of the air-brake provision was present. And not only were these trains exposed to the hazards which that provision was intended to avoid or minimize, but unless their engineers were able readily and quickly to check or control their movements they were a serious menace to the safety of other trains which the statute was equally designed to protect. That they carried no caboose or markers is not material. If it were, all freight trains could easily be put beyond the reach of the statute and its remedial purpose defeated. Neither is it material that the men in charge

> were designated as yard or switching crews, for the controlling test of the statute's application lies in the essential nature of the work done rather than in the names applied to those engaged in it. (237 U. S. pp. 412–413.)

The nature of the work being done in this case was essentially the same as that in the two cases cited, namely, the transfer from one yard to another of a string of cars previously assembled into a train. In the cases cited the conclusion that the operations involved train movements rather than strictly yard or switching movements seems to have been based primarily upon the fact that they were not movements merely incidental to making up and breaking up of trains. The fact that portions of tracks used as main lines were used seems to have been mentioned as an additional reason for the conclusion. But since it is expressly held that the controlling test is the essential nature of the work, there is nothing in these cases which would preclude the holding that the transfer of a train already assembled in one yard to another yard where it is to be subsequently broken up would be such a train movement as that the air brake requirement would be applicable whether the connecting track is a track used for through traffic or not. If, however, it be assumed that the air brake requirement is not applicable to movements of such transfer trains unless main-line tracks are used, the cases cited are still controlling. It seems impossible, even upon this assumption, to find any point of difference between those cases and this ex-

cept in the length of main line used. And if the test is the use of main-line tracks where there is danger of collision with through trains, no reason is perceived why the applicability of the statute depends upon the length of the main line used. The only difference between the danger incident to using two miles of main line and that incident to using a half mile is the length of time during which the danger exists. While the half mile is being used, the danger is just as great as where the two miles are being used. If, therefore, the railroad company is not permitted to use two miles of main line without complying with this statute, there would seem to be no possible reason for holding that it can use a half mile without such compliance.

Moreover, the present is, in some respects, a stronger case for the application of the statute than the cases cited. In those cases the trip from yard to yard consisted of an uninterrupted run from one to the other. In the present case, in order to make the run, it was necessary twice to pass a switch and reverse the movements of the train, with the result that the train was moved for a considerable distance in both directions over the same main line. Again, in the cases cited, the trains engaged in through traffic and using the line connecting the two yards were trains being run and controlled by the same company that operated the transfer train. While using the main line, therefore, the company had to look out only for its own trains. In the present case, a part of the trip was made over a track on which

the Chesapeake & Ohio operated trains and a part over another track on which the Big Four, the Illinois Central, and the Louisville & Nashville operated trains of some character.

It is respectfully submitted that the cases cited are conclusive of this case and that the statement of facts made by the Circuit Court of Appeals shows the existence of everything necessary to make the statute in question applicable and that the question certified should be answered in the affirmative.

Respectfully,

WILLIAM L. FRIERSON,
Assistant Attorney General.

MARCH, 1919.

○

LOUISVILLE & JEFFERSONVILLE BRIDGE COMPANY *v.* UNITED STATES.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 312. Argued March 28, 1919.—Decided April 21, 1919.

The transferring of twenty-six cars as a unit, for delivery from the terminal of one company to that of another, without uncoupling or switching out any car, by a movement through a distance of over three-quarters of a mile, 2600 feet of it, with two startings and stoppings, on main tracks, at speed reaching fifteen miles per hour, and involving crossings at grade of several city streets, *held*, not a mere switching operation but a train movement, subject to the train-brake provisions of the Safety Appliance Act, as amended. P. 538.

The application of the act can not be made to depend on the taking of other than the prescribed precautions, such as providing gates and watchmen, or upon balancing the dangers involved in following its requirements against those involved in its neglect. P. 539.

THE case is stated in the opinion.

Mr. Edward P. Humphrey, with whom *Mr. Alex. P. Humphrey* and *Mr. W. W. Crawford* were on the brief, for Louisville & Jeffersonville Bridge Co.:

The cars mentioned in the certificate traveled, all told, a much less distance than those in *United States* v. *Chicago, Burlington & Quincy R. R. Co.*, 237 U. S. 410; *United States* v. *Pere Marquette R. R. Co.*, 211 Fed. Rep. 220; *United States* v. *Grand Trunk Ry. Co.*, 203 Fed. Rep. 775; *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States*, 198 Fed. Rep. 637; *Chesapeake & Ohio Ry. Co.* v. *United States*, 226 Fed. Rep. 683; *Pennsylvania Co.* v. *United States*, 241 Fed. Rep. 828; and *United States* v. *Galveston, H. & H. R. R. Co.*, 255 Fed. Rep. 755. Furthermore, the

movement was not continuous or between two widely separated points, but distinctly local, in a circumscribed area used for switching purposes, the cars not making a train trip over the road in the ordinary acceptation of the term but going back and forth and over switches between points a very short distance apart.

A switching movement is none the less such because the cars pass partly over main track and partly over side track. In small yards, particularly in country districts, the main track is used extensively for switching purposes.

It is obvious that no good result can be accomplished by the continual coupling and uncoupling of air hose during switching movements, where the cars travel comparatively short distances, and the cuts are frequently broken up. Aside from the great expense in the operation of railroad yards, which would be entailed by enforcing such a requirement in this case, no good can result, as it would merely delay the handling of traffic and increase, rather than diminish, the danger which such legislation was intended to prevent.

The Solicitor General, with whom *Mr. Assistant Attorney General Frierson* was on the brief, for the United States.

MR. JUSTICE CLARKE delivered the opinion of the court.

The Circuit Court of Appeals for the Sixth Circuit certifies to this court for answer the question, whether the Safety Appliance Act, as amended, requires that 85 per cent. of the train brakes shall be coupled so as to be under engine control when making the transfer of twenty-six cars, in a movement which is described in the court's certificate.

The pertinent part of the original Act approved March 2, 1893, c. 196, 27 Stat. 531, reads:

"It shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system or, to *run any train in such traffic* . . . that has not a sufficient number of cars in it so equipped with power or train brakes *that the engineer on the locomotive drawing such train can control its speed* without requiring brakemen to use the common hand brake for that purpose."

And the relevant part of the amendment, approved March 2, 1903, c. 976, 32 Stat. 943, is:

"And the provisions and requirements hereof and of said Acts relating to train brakes . . . *shall be held to apply to all trains* . . . *used on any railroad engaged in interstate commerce.*"

Section 2 of the amendment provides that when any train is operated with power or train brakes not less than 50 per cent. of the cars in such train shall have their brakes used and operated by the engineer of the locomotive, etc. Authority was given the Interstate Commerce Commission to increase the percentage of cars in any train which must have their brakes so used and operated and in 1910 the Commission increased it to 85 per cent.

The essential facts, somewhat condensed, from the statement of the Circuit Court of Appeals are:

The Bridge Company, a common carrier engaged in interstate commerce, operates a large terminal yard at Louisville, Kentucky, which constitutes the joint terminal of the Big Four and the Chesapeake & Ohio systems of railway. The yard is 1800 feet in length, 700 feet in width, and consists of two main tracks, with from fifteen to twenty-five approximately parallel tracks, which are connected with the main tracks by leads in the customary manner.

For the purposes of this proceeding the following movement of cars was adopted by the parties as typical. Twenty-six cars were assembled at the easterly end of the yard of the Bridge Company and were coupled together, but without any of the air brakes being connected, preparatory to their transfer westerly and delivery into the Illinois Central yard. The engine was at the easterly end of the cars, nearly 1100 feet in length, which were pushed westerly the entire length of the large and necessarily busy yard. Part of this movement in the Bridge Company's yard, how much does not appear, was over a main line track, it was necessarily over many connections with other tracks on which several other engines and crews must have been working, habitually, and it was over four city streets at grade, the crossing over the most westerly one, on account of the grade beyond, being made at a speed of 15 miles an hour. A short distance from the exit from the Bridge Company's yard the cars entered upon a track of the Illinois Central Railroad Company, used as a main line by both the Big Four and the Chesapeake & Ohio companies, and after they had been pushed westerly on that track a distance of 1100 feet, they were stopped on this main track. Next, reversing the movement, the engine, now pulling the cars, moved easterly over three city streets at grade a distance of 1300 feet on a track used by the Chesapeake & Ohio Company for its through main line trains, and stopped on that track. Again reversing, the engine, now pushing the cars, ran westerly over three city streets at grade a distance of 1300 feet, still on the track used as a through main line track by the Chesapeake & Ohio Company, and then into the Illinois Central yard, where the cars were delivered.

The contention of the Bridge Company is that the foregoing describes a mere switching of cars, not a train movement within the meaning of the act of Congress, and

that, therefore, the requirement that 85 per cent. of the cars shall have the train brakes upon them used and operated does not apply.

An engine and twenty-six cars, assembled and coupled together, not only satisfies the dictionary definition of a "train of cars," but would certainly be so designated by men in general and in any fair acceptation of the term must be regarded as constituting a train within the meaning of the statute. It was a train greater in length than most regularly scheduled trains were when this Safety Appliance Act was passed twenty-six years ago, and even yet, probably, exceeds in length, passenger and freight trains considered, more than a majority of the regular road trains in this country.

The work done with the cars, as described, was not a sorting, or selecting, or classifying of them, involving coupling and uncoupling, and the movement of one or a few at a time for short distances, but was a transfer of the twenty-six cars as a unit from one terminal into that of another company for delivery, without uncoupling or switching out a single car, and it cannot, therefore, with propriety be called a switching movement.

The movement of this train of cars, 1100 feet in length, was for a distance of over three-quarters of a mile, and involved crossing, at grade, three city streets once, two streets twice, one street three times, and a main track movement of at least 2600 feet, with two stops and startings on the main track. This is not only a train movement, but it would be difficult to imagine one in which the control of the cars by train brakes would be more necessary, in order to secure that safety of employees, of passengers and of the public which it is the purpose of the act to secure, by requiring that engineers shall be given control sufficient to stop any train they may be moving, promptly on the first signal or sight of danger. The mere inertia of twenty-six cars, which must usually be

loaded, and especially when running 15 miles an hour, would render it impossible to control or to stop them promptly with power-brakes operative only on the engine, and the ability to use such brakes on the entire train must often mean the difference between safety and serious accident when running, as here, in a crowded yard, across busy city streets and on main line tracks of railroads.

It is argued that coupling of the train brakes was not necessary for the reason that the street crossings used were protected by gates, that a yard master from an elevated tower watched over the main line movements, and that the coupling of the train-brake appliances would involve more danger to the employees than the movement of the cars without their being used and operated. These suggestions serve to emphasize the dangerous character of the movement. But the construction which the act should receive is not to be found in balancing the dangers which would result from obeying the law with those which would result from violating it, nor in considering what other precautions will equal, in the promotion of safety, those prescribed by the act. Such considerations were for Congress when enacting the law and it has repeatedly been held by this court that other provisions of the Safety Appliance Act impose upon the carrier the absolute duty of compliance in cases to which they apply and that failure to comply will not be excused by carefulness to avoid the danger which the appliances prescribed were intended to guard against, nor by the adoption of what might be considered equivalents of the requirements of the act. *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Taylor*, 210 U. S. 281, 295; *Great Northern Ry. Co.* v. *Otos*, 239 U. S. 349; *St. Joseph & Grand Island Ry. Co.* v. *Moore*, 243 U. S. 311.

The case falls within the scope of *United States* v. *Erie R. R. Co.*, 237 U. S. 402, and *United States* v. *Chicago, Burlington & Quincy R. R. Co.*, 237 U. S. 410, 413, in

the latter of which it is said that "the controlling test of the statute's application lies in the essential nature of the work done."

For the reasons stated in this opinion, the movement as described in the certificate and the essential nature of the work done, require that the question of the Circuit Court of Appeals be answered in the affirmative.

END

OF

CASE